

MAJORITY MEMBERS:

JOHN KLINE, MINNESOTA, Chairman

THOMAS E. PETRI, WISCONSIN
HOWARD P. "BUCK" McKEON, CALIFORNIA
JUDY BIGGERT, ILLINOIS
TODD RUSSELL PLATT, PENNSYLVANIA
JOE WILSON, SOUTH CAROLINA
VIRGINIA FOXX, NORTH CAROLINA
BOB GOODLATTE, VIRGINIA
DUNCAN HUNTER, CALIFORNIA
DAVID P. ROE, TENNESSEE
GLENN THOMPSON, PENNSYLVANIA
TIM WALBERG, MICHIGAN
SCOTT DESJARLAIS, TENNESSEE
RICHARD L. HANNA, NEW YORK
TODD ROKITA, INDIANA
LARRY BUCSHON, INDIANA
TREY GOWDY, SOUTH CAROLINA
LOU BARLETTA, PENNSYLVANIA
KRISTI L. NOEM, SOUTH DAKOTA
MARTHA ROBY, ALABAMA
JOSEPH J. HECK, NEVADA
DENNIS A. ROSS, FLORIDA
MIKE KELLY, PENNSYLVANIA



COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MINORITY MEMBERS:

GEORGE MILLER, CALIFORNIA,
Senior Democratic Member

DALE E. KILDEE, MICHIGAN, Vice Chairman
DONALD M. PAYNE, NEW JERSEY
ROBERT E. ANDREWS, NEW JERSEY
ROBERT C. "BOBBY" SCOTT, VIRGINIA
LYNN C. WOOLSEY, CALIFORNIA
RUBEN HINOJOSA, TEXAS
CAROLYN MCCARTHY, NEW YORK
JOHN F. TIERNEY, MASSACHUSETTS
DENNIS J. KUCINICH, OHIO
RUSH D. HOLT, NEW JERSEY
SUSAN A. DAVIS, CALIFORNIA
RAÚL M. GRIJALVA, ARIZONA
TIMOTHY H. BISHOP, NEW YORK
DAVID LOEBSACK, IOWA
MAZIE HIRONO, HAWAII
JASON ALTMIRE, PENNSYLVANIA

February 10, 2012

The Honorable Hilda L. Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Secretary Solis:

We respectfully request a 90-day extension of the comment period for the Wage and Hour Division's (WHD) December 27, 2011, Notice of Proposed Rulemaking (the proposed rule) entitled: *Application of the Fair Labor Standards Act to Domestic Service*.¹ We request the extension in light of our concerns with the proposed rule and to provide adequate time to review related information and documents we requested in October 2011, which the department failed to provide.²

The proposed rule would significantly change long-standing regulations pertaining to the companionship services minimum wage and overtime exemption under the *Fair Labor Standards Act* (FLSA). Specifically, the proposed rule would redefine what constitutes companionship services, thereby limiting the types of duties and tasks that qualify for the exemption, and provide that companionship workers who work for third-party employers are subject to FLSA requirements.

If finalized in its current form, the proposed rule would diminish the availability of in-home care. WHD has determined the changes to be "economically significant," meaning they would burden the economy by more than \$100 million per year.³ In addition, WHD recognizes the proposed rule would place unfunded mandates on the private sector.⁴ We are concerned such increased costs

¹ Regulatory Information Number (RIN) 1235-AA05, 76 Fed. Reg. 81190 (Dec. 27, 2011).

² Letter from the Honorable John Kline, Chairman, House Committee on Education and the Workforce, and the Honorable Tim Walberg, Chairman, House Subcommittee on Workforce Protections, to the Honorable Hilda Solis, Secretary, U.S. Department of Labor (Oct. 7, 2011), available at http://edworkforce.house.gov/UploadedFiles/10-07-11_Kline_Walberg_to_Solis.pdf [hereinafter Oct. 2011 Letter].

³ Office Management and Budget, Application of the Fair Labor Standards Act to Domestic Service (Jan. 2012), available at <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201110&RIN=1235-AA05>.

and mandates will ultimately limit seniors' access to in-home care by making it significantly less affordable, and by forcing home care providers and their workers out of the marketplace.

It is critical interested parties are provided ample time to analyze and provide comment on this economically significant proposal. WHD can only benefit from thorough and fully informed comments from interested parties, who best understand the proposed rule's potential consequences for workers, seniors, infirm and disabled individuals, and home care providers. Unfortunately, the proposal's short comment period—which commenced in the midst of the holiday season—does not provide interested parties with adequate time to comment.

Our concerns with this rulemaking and its short comment period are compounded by the department's failure to adequately respond to our previous, related oversight requests. On October 7, 2011, we wrote to you concerning the then-anticipated rulemaking.⁵ On October 31, 2011, the department responded to our inquiry,⁶ but failed to adequately provide the documents we requested or respond to a number of questions in our letter. The documents and information we requested are essential to our understanding of the formulation and content of the proposed rule. Accordingly, we ask you again to provide the following information by **February 24, 2012**:⁷

- 1) A detailed timetable outlining DOL's internal review process for this rulemaking, including, but not limited to, the offices and agencies that have reviewed it, documents created for each review to date, and the names and job titles of officials who reviewed and/or approved the rulemaking;
- 2) All documents and communications containing draft language or supporting materials relating to this rulemaking;
- 3) A list of all meetings and telephone conversations with outside groups relating to the conception of this rulemaking and its drafting process, including the date, location, attendees, and topics of such meetings; and all documents and communications relating to such meetings and conversations;
- 4) All documents exchanged and communications between DOL and the Office of Management and Budget (OMB) concerning the rulemaking, specifically including, but not limited to, all documents relating to this rulemaking transmitted by DOL to OMB, other than the semiannual regulatory agendas;

⁴ *Id.*

⁵ See Oct. 2011 Letter, *supra* note 2.

⁶ Letter from the Honorable Brian V. Kennedy, Assistant Secretary of Congressional and Intergovernmental Affairs, U.S. Department of Labor, to the Honorable John Kline, Chairman, House Committee on Education and the Workforce, and the Honorable Tim Walberg, Chairman, House Subcommittee on Workforce Protections (Oct. 31, 2011) (on file at the House Committee on Education and the Workforce).

⁷ If you are unable to provide the requested information by that date, please inform the committee in writing why you cannot meet the deadline, and the date by which you will provide the requested information.

- 5) A list of the dates, attendees, and topics for all meetings and telephone conversations between DOL and OMB relating to this rulemaking, and all documents and communications relating to such meetings and conversations; and
- 6) All economic impact studies, regulatory flexibility analyses, and/or burden analyses developed by DOL, including studies conducted by any contractor, in anticipation of this rulemaking, or in any way relating to this rulemaking. Do not include in the response the impact analysis provided in the proposed rule.


Again, in light of the above concerns, and so that we may review the requested information, we request that DOL extend the proposed rule's comment period by 90 days from the current closing date of February 27, 2012.

Thank you for your time and attention to our requests. If you have questions or comments, please contact Donald McIntosh or Joe Wheeler of the committee staff at (202) 225-7101.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



TIM WALBERG
Chairman
Subcommittee on Workplace Protections

Enclosure

CC: The Honorable George Miller, Senior Democratic Member, House Committee on Education and the Workforce